

United States
Circuit Court of Appeals
For the Ninth Circuit.

JUNG LIN,

Appellant,

vs.

JOHN D. NAGLE, as Commissioner of Immigration
for the Port of San Francisco, California,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Southern Division.

FILED

JUL 23 1951

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For Petitioner and Appellant:

JOSEPH P. FALLON, Esq., 550 Montgomery
St., San Francisco, California.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Fran-
cisco, Calif.

In the Southern Division of the United States Dis-
trict Court, for the Northern District of Cali-
fornia, Second Division.

No. 20,233—K.

JUNG LIN,

Appellant,

vs.

JOHN D. NAGLE, as Commissioner of Immigra-
tion for the Port of San Francisco.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

Sir: Please issue for transcript on appeal the
following papers, to wit:

1. Petition for writ of habeas corpus.
2. Order to show cause.
3. Exhibit "A" (Findings of Board of Special
Inquiry).
4. Exhibit "A" (Findings of Board of Review).

5. Appearance of respondent and notice of filing excerpts from the original immigration record.
6. Respondent's memorandum of excerpts of testimony from the original immigration record.
7. Minute order denying writ of habeas corpus.
8. Notice of appeal.
9. Petition for appeal.
10. Assignment of errors.
11. Order allowing appeal.
12. Order transmitting original exhibits.
13. Citation on appeal.
14. Praecipe.
15. Clerk's certificate.

JOSEPH P. FALLON,
Attorney for Appellant.

[Endorsed]: Filed Jun. 3, 1930. [1*]

In the Southern Division of the United States District Court, for the Northern District of California, Second Division.

No. 20,233—K.

In the Matter of JUNG LIN, on Habeas Corpus, #28591/2-4 ex SS. "Tenyo Maru," Nov. 24, 1929; Daughter of Native.

*Page-number appearing at the foot of page of original certified Transcript of Record.

PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable United States District Judge,
Now Presiding in the United States District
Court, in and for the Northern District of Cali-
fornia, Second Division:

It is respectfully shown by the petition of Jung Woh that Jung Lin, hereafter in this petition referred to as the "detained," is unlawfully imprisoned, detained, confined and restrained of her liberty by John D. Nagle, Commissioner of Immigration for the port of San Francisco, at the immigration station at Angel Island, County of Marin, State and Northern District of California, Southern Division thereof; that the said imprisonment, detention, confinement and restraint are illegal and that the illegality thereof consists in this, to wit:

That it is claimed by the said Commissioner that the said detained is a Chinese person and alien not subject or entitled to admission into the United States under the terms and provisions of the Acts of Congress of May 5, 1882, July 5, 1884, November 3, 1893, and April 29, 1902, as amended and re-enacted by Section 5 of the Deficiency Act of April 7, 1904, which said acts are commonly known and referred to as the Chinese Exclusion or Restriction Acts; and that he, the said Commissioner, intends to deport the said detained away from and out of the United States to the Republic of China. [2]

That the Commissioner claims that the said detained arrived at the port of San Francisco on or

about the 24th of November, 1929, on the SS. "Tenyo Maru," and thereupon made application to enter the United States as a citizen thereof by virtue of being the foreign-born daughter of your petitioner's deceased father, Jung Ock, a native-born citizen of the United States, and that the application of said detained to enter the United States as a citizen thereof was denied by said Commissioner of Immigration and a Board of Special Inquiry, and that an appeal was thereupon taken from the excluding decision of said Commissioner of Immigration and said Board of Special Inquiry to the Secretary of the Department of Labor, and that said Secretary thereafter dismissed said appeal; that it is claimed by said Commissioner that in all of the proceedings had herein the said detained was accorded a full and fair hearing; that the action of said Commissioner and said Board of Special Inquiry and said Secretary was taken and made by them in the proper exercise of the discretion committed to them by the statutes in such cases made and provided, and in accordance with the regulations promulgated under the authority contained in said statutes.

But, on the contrary, your petitioner alleges upon his information and belief that the hearing and proceedings had herein, and the action of the said Board of Special Inquiry and the action of said Secretary of Labor was and is in excess of the authority committed to them by the said rules and regulations and by said statutes, and that the denial of said application of said detained to enter the

United States as a citizen thereof by virtue of being the foreign-born daughter of your petitioner's deceased father, Jung Ock, a native-born citizen of the United States, was and is an abuse of the authority committed to them by said statutes, and in this behalf your petitioner alleges:

That the said detained, Jung Lin, is the blood daughter of Jung Ock, now deceased, who was by reason of his birth therein a [3] citizen of the United States; that the citizenship of the said Jung Ock is conceded and the detained as his blood daughter is a citizen of the United States by virtue of Section 1993, Revised Statutes of the United States; that the detained was accorded upon her application for admission a hearing before a Board of Special Inquiry and was denied admission; that your petitioner alleges upon his information and belief, and therefore alleges the fact to be, that the sole ground for the excluding decision of the immigration officials was the dispute that arose at the aforesaid hearing as to what Chinese dialect the detained was speaking in answer to the questions propounded to her in the Chinese language. It was alleged that the detained spoke a different Chinese dialect than the dialect spoken by her four brothers who testified as to the relationship of themselves to the detained and their common father, Jung Ock; that your petitioner alleges that there is no difference in the Chinese dialect spoken by the detained and the aforesaid brothers, and further alleges that the official Chinese interpreters who questioned the detained themselves differed in their

opinion on the point in question; one asserted that she spoke a mixed dialect; one that she spoke Sam Yup and others that she spoke various other dialects; that the detained when informed that she did not speak the See Yip Hoy Ping dialect answered: "There are many dialects spoken in the Hoy Ping District and I have always spoken the same dialect I am speaking now." That to deny the detained admission on such alleged evidence is to deny her admission on evidence that is mere conjecture, and such is not sufficient in law to warrant any such arbitrary action on the part of the aforesaid immigration officials.

That the testimony taken upon said hearing was voluminous and no discrepancies of any moment were developed; that the summary of the Board of Special Inquiry is attached hereto, made a part hereof and marked Exhibit "A"; that there is also attached hereto, made a part hereof and marked Exhibit "B," a copy of the brief filed by [4] A. Warner Parker, Esq., Attorney at Law, Washington, D. C., who represented the applicant before the Department of Labor.

That upon the hearing had before the immigration officials respecting the right of admission of the detained, your petitioner, his three brothers, and the detained testified as to the relationship existing between them and their father, Jung Oek; that the oral testimony and documentary evidence introduced and submitted upon behalf of the said detained at the aforesaid hearing was of such a conclusive kind and character and was of such

legal weight and sufficiency, that it was an abuse of discretion on the part of said Board of Special Inquiry and said Secretary of Labor not to be guided thereby, and the said adverse action of said Commissioner and said Board and said Secretary was, your petitioner alleges upon his information and belief, arrived at and was done in denying the detained the fair hearing and consideration of her case to which she was entitled. Said action was in excess of the discretion committed to the said Secretary, said Board and to said Commissioner of Immigration. Your petitioner further alleges upon his information and belief that said action of said Secretary, said Commissioner and said Board was influenced against said detained and against her witnesses solely because of their being of the Chinese race.

Your petitioner alleges upon his information and belief that the evidence presented before the Board of Special Inquiry was of such a positive kind and character that to refuse to be guided thereby was an abuse of discretion and in violation of the decision of the Circuit Court of Appeals in *Ex parte Johnson vs. Leung Fook Young*, 16 Fed. (2d) 65, and finally *Johnson vs. Ng Wah Sun*, 16 Fed. (2d) 11, and in violation of the Court of Appeals in this, the 9th Circuit, in *Go Lun vs. Nagle*, 22 Fed. (2d) 240, and in the case of *U. S. vs. Brough*, 22 Fed. (2d) 926, cited in the Circuit Court of Appeals for the Second Circuit in New York, and in the case of *Wong Tsick Wye and Wong Moon Quong vs. Nagle*, 33 Fed. (2d) 226, Circuit [5]

Court of Appeals for the Ninth Circuit, and *In re Gong You vs. Nagle*, 34 Fed. (2d) 848; and *In re Jue Mook vs. Tillinghast*, 36 Fed. (2d) 39, First Circuit Court of Appeals (recent decision).

Your petitioner alleges upon his information and belief that the said detained has been denied a fair hearing and that there is no supporting evidence to be found in the said immigration record to support the adverse action of the said immigration authorities and that said decision is against evidence of such a positive kind and character that it was a manifest abuse of discretion.

That your petitioner has not within his possession nor within his control, or is it possible for him to obtain a copy of the original immigration record in said matter to file with this petition, save and except a copy of the summary of the Board of Special Inquiry's decision, filed in the duplicate immigration record now at Angel Island, heretofore referred to; that your petitioner has not therefore a copy of the record to present with this petition, but stipulates that the immigration service record may be admitted in evidence with the same force and effect as if filed with this petition.

That it is the intention of said Commissioner of Immigration to deport the detained out of the United States and away from the land of which she is a citizen by the SS. "Shinyo Maru," sailing from the port of San Francisco March 22d, 1930, at 12 o'clock noon, and unless this court intervenes to prevent said deportation the said detained will

be deprived of residence within the land of her citizenship.

That said detained is in detention at the Immigration Station at Angel Island, County of Marin, and cannot for said reason verify said petition upon her own behalf, and said petition is therefore verified by your petitioner, brother of said detained, upon her behalf.

That said Jung Lin, the detained person, has exhausted all her [6] rights and remedies and has no further remedy before the Department of Labor, and unless the writ of habeas corpus issue out of this court as prayed for herein, directed to John D. Nagle, Commissioner as aforesaid, in whose custody the body of said Jung Lin is, said Jung Lin will be deported from the United States to China without due process of law.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein as prayed for, directed to the said Commissioner, commanding and directing him to hold the body of the detained within the jurisdiction of this court, and to present the body of said detained before this court at a time and place to be specified in said order, together with the time and cause of her detention, so that the same may be inquired into, to the end that the said detained may be restored to her liberty and go hence without day.

Dated: San Francisco, California, March 19th, 1930.

JOSEPH P. FALLON,
Attorney for Petitioner and Detained.

State of California,
City and County of San Francisco,—ss.

Jung Woh, being first duly sworn, deposes and says:

That he is the petitioner named in the foregoing petition; that he has heard said petition read and explained and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes them to be true.

(Chinese Characters)
JUNG WOH.

Subscribed and sworn to before me this 19th day of March, 1930.

[Seal] HARRY L. HORN,
Notary Public in and for the City and County of
San Francisco, State of California. [7]

EXHIBIT "A."

JUNG LIN, Daughter of Native, #28591/2-4 ex
SS. "Tenyo Maru," November 24, 1929.
December 24, 1929.

SUMMARY.

By CHAIRMAN:

The alleged father of this applicant, Jeung (Jung) Ock (Duck) or Jung Ying Bing, claimed to have been born in San Francisco, Cal., in T. C. 10-9-28 (Nov. 10, 1871). He made six trips to China that are on record in his file No. 12017/27772. He first

claimed to have been married on Jan. 4, 1906, when he was being examined prior to readmission to the United States after his first recorded trip to China. At that time he stated that he was married to Leung Shee, then aged 20, during the 8th month of 1905, or about September, 1905. Unfortunately at that time he was not questioned regarding his family status. The first mention of any children occurs when he was examined at Angel Island on August 6, 1910. At that time he confirmed his previous statement of marriage and stated further that he had two boys and one girl, describing them as "Jeung Jick, born K. S. 32-7-20 (Sept. 8, 1906), Jeung Wah, born S. T. 2-5 (June, 1910), and Jeung Lin 6, born K. S. 31-6-4 (July 6, 1905)." From this it is apparent that the essential trip in this case must have been the first one on record when the alleged father departed from San Francisco via the SS. "Korea" on Nov. 18, 1903, and returned via the SS. "America Maru" on Jan. 3, 1906. Since that time he has consistently maintained the same name and birth date for the present applicant with one exception, when he claimed her birth date to be K. S. 32-6-10 (July 30, 1906). It is to be noted that all five principals in the case claim that their alleged father died on September 26, 1926.

In so far as the family history and description of the native village are concerned all five principals are in fairly good agreement. But there is nothing remarkable in this since any person of fair intelligence and memory could easily be coached to the extent of knowing such matters fairly well

and being able to recite answers to given questions glibly and convincingly. Numerous coaching documents now in the possession of this station indicate how minutely Chinese applicants for admission have been prepared in the past. Certain discrepancies should be noted. The applicant claims that both of her maternal grandparents died before she was born. Her oldest brother, Jung Juck, claims that both maternal grandparents are now living. Her second brother, Jung Woh claims that both maternal grandparents are dead. Her third brother, Jung Share, claims that his maternal grandfather is now living, but that his maternal grandmother is dead.

The applicant and her brothers, Jung Juck, Jung Share and Jung Som, all claim that two meals a day were eaten in their home in the kitchen on the south side. The brother Jung Woh claims that three meals a day were eaten and that they were always eaten in the parlor of the house.

The applicant claims that the stove in the south kitchen which was used for cooking purposes was furnished with a terra cotta flue chimney. All of her alleged brothers claim that the stove was not furnished with any chimney.

The applicant claims that the road leading from her village to Gung Hing Market is paved all the way, while her brothers Jung Juck and Jung Woh both claim that this road is a dirt road. [8]

All five principals in this case are comparatively young people and have all been in the home village within very recent time. None of them could rea-

sonably claim impairment of memory or lack of familiarity with home village and family circumstances due to lapse of time. There should, therefore, have been much better agreement among them concerning the discrepancies above noted. However, the circumstance that looms up as being most damaging to the applicant's case is the fact that she does not speak the See Yip dialect of the Hoy Ping district as she claims. All of the interpreters who acted in her behalf remarked upon the fact that she was not testifying in the See Yip dialect of the Hoy Ping district and two of these interpreters, Lee Park Lin and Harry K. Tang, both of whom are exceptionally well qualified to judge in such matters through their long experience as interpreters and intimate knowledge of numerous Chinese dialects, have stated very positively that she does not speak the See Yip dialect of the Hoy Ping district, but another dialect which is partly Cantonese or closely akin thereto. This would indicate that the applicant does not come from the Hoy Ping district as she claims. She testified that she had never been away from the home village all of her life with but one exception, when she was sent to Canton for a period between 10 and 20 days. It is obvious that even if she could learn to speak Cantonese in so short a time it could not have influenced her dialect to such an extent that she would completely forget the dialect that she should have been speaking all the rest of her life. It should be noted that the attitude of the applicant throughout the hearing was not good. She maintained a

sullen furtive air throughout the hearing and most of her answers were given in a hesitating manner, somewhat like that of a school child trying to answer a previously prepared lesson.

From the evidence adduced in this case I am of the opinion that this applicant has not reasonably established the claimed relationship and I therefore move that she be denied admission to the United States and deported to China, the country from which she came.

By Member DAVIS.—I second the motion.

By Member MORRIS.—I concur. [9]

EXHIBIT "A."

February 3, 1930.

SUMMARY.

CHAIRMAN: (LESTER COLE.)

This applicant was denied admission to the United States on Dec. 26, 1929. This denial was based mainly upon the fact that the applicant did not speak the See Yip Hoy Ping dialect. She claimed as her own dialect the See Yip Hoy Ping. She claims to be about 25 years of age and to have lived in the See Gew village, Hoy Ping district, all of her life with the exception of some 20 days when she went to visit a friend in Canton City. All of the interpreters who have acted in this case are agreed that this applicant does not speak the See Yip dialect of the Hoy Ping district. It should be noted that her alleged brother Jung Woh, who appeared at the present hearing, has been away

from the home village ever since he was 5 years of age and yet is found to speak the See Yip Hoy Ping dialect, which is the dialect that he learned as a child.

On Jan. 30, 1930, this applicant was ordered deported. On Jan. 31st Commissioner General Hull ordered this case reopened in order that a test might be made of the dialect spoken by the applicant's alleged brothers and a comparison made with the dialect spoken by the applicant. This was done in to-day's hearing. Only two of the applicant's alleged brothers, Jung Juck and Jung Woh, appeared at the hearing. The appearance of the other two brothers who originally testified at Los Angeles was especially waived at this hearing.

The applicant and the two alleged brothers who appeared here to-day were questioned by three of our ablest interpreters, all of whom are men well qualified by experience to test and compare dialectic variations. All of these interpreters agreed that the applicant did not speak the See Yip Hoy Ping dialect and further that she did not testify in the same dialect that was used by her alleged brothers. There is attached hereto a sheet marked Exhibit "D," containing eight questions written in Chinese by interpreter H. K. Tang. There is also attached a sheet marked Exhibit "E," containing the same eight questions with the English pronunciation of the words in the Sam Yup and See Yip Hoy Ping dialects. Each of the alleged brothers was asked to slowly read these eight sentences. They did so. It is to be noted in this connection that the oldest

alleged brother, Jung Juck, attempted to disguise his dialect when reading these eight sentences. The other alleged brother pronounced them in his native dialect without any attempt to change or disguise. With the English pronunciation before me I was able to note the difference between Jung Juck's pronunciation of the words and Jung Woh's pronunciation of the words and I agree with the interpreters in stating that it was quite apparent that Jung Juck was trying to pronounce the words of the eight sentences in a different manner from what was given as the correct See Yip Hoy Ping pronunciation. It should be noted also that Jung Woh seemed to be rather confused about the simple question as to what was his birth date. It seems to me that almost any person, illiterate or otherwise, should be reasonably certain of his birth date. From the additional evidence adduced in to-day's hearing I am still of the opinion that the claimed relationship has not been reasonably established and I therefore move that this applicant be denied admission to the United States and deported to China, the country from which she came.

Member DAVIS.—I second the motion.

Member HECHT.—I concur.

[Endorsed]: Filed Mar. 21, 1930. [10]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

Good cause appearing therefor, and upon reading the verified petition on file herein,—

IT IS HEREBY ORDERED that John D. Nagle, Commissioner of Immigration for the port of San Francisco, appear before this court on Monday, the 14th day of April, 1930, at the hour of 10 o'clock A. M. of said day, to show cause, if any he may have, why a writ of habeas corpus should not be issued herein as prayed for, and that a copy of this order be served upon the said Commissioner and a copy of the petition and said order be served upon the United States Attorney for this District, his representative herein; and

IT IS FURTHER ORDERED that the said John D. Nagle, Commissioner of Immigration as aforesaid, or whoever, acting under the orders of said Commissioner, or the Secretary of Labor, shall have the custody of said Jung Lin, or the master of any steamer upon which she may have been placed for deportation by said Commissioner, are hereby directed and ordered to retain said Jung Lin within the custody of the said Commissioner of Immigration and within jurisdiction of this court, until its further order herein.

Dated: San Francisco, California, March 21st,
1930.

FRANK H. KERRIGAN,
United States District Judge.

[Endorsed]: Filed Mar. 21, 1930. [11]

[Title of Court and Cause.]

APPEARANCE OF RESPONDENT AND
NOTICE OF FILING EXCERPTS OF
TESTIMONY FROM THE ORIGINAL
IMMIGRATION RECORD.

To the Petitioner in the Above-entitled Matter, and
to Joseph P. Fallon, Esq., Her Attorney:

PLEASE TAKE NOTICE that the respondent hereby appears in the above-entitled matter and will, upon the hearing on the order to show cause, rely upon certain excerpts of testimony from the original immigration record additional to the portions of such records which are set out in the petition for writ of habeas corpus herein, a copy of such additional excerpts being annexed hereto. Please examine same prior to the hearing on the order to show cause.

Dated: May 26, 1930.

GEORGE J. HATFIELD,
United States Attorney.
(Attorney for Respondent.) [12]

[Title of Court and Cause.]

RESPONDENT'S MEMORANDUM OF EX-
CERPTS OF TESTIMONY FROM THE
ORIGINAL IMMIGRATION RECORD.

The witnesses herein are:

JUNG LIN, the applicant, female, born July 6, 1905, never in the United States.

JUNG JUCK, alleged brother of applicant, born September 8, 1906, first came to the United States during May, 1914, and was back in China from October, 1920, to June, 1921, and from April, 1926, to September, 1927.

JUNG WOH, alleged brother of applicant, born June 22, 1910, first came to the United States June 1, 1915, and was back in China from May, 1925, to May, 1926.

JUNG SHARE, alleged brother of applicant, born November 7, 1913, first came to the United States June 17, 1920, and was back in China from July, 1928, to June, 1929.

JUNG SOM, alleged brother of applicant, born November 2, 1915, first came to the United States December 29, 1927, and has been here since.

Applicant seeks admission as the daughter of one Jung Ock, a citizen of the United States, who is said to have died on September 26, 1926. The immigration authorities have denied her admission for failure to establish her claimed relationship to that person. We quote below, from the original

[13] immigration record, some of the testimony upon which the finding is based.

I.

The following appears in the testimony of JUNG JUCK, given on February 3, 1930:

“Q. What other districts border on the Hoy Ping District?

A. Yin Ping District, Sun Ning District; that’s all I know.

Q. Whereabouts in the Hoy Ping District is your home village located with reference to the boundaries of the district?

A. I don’t know, but I think my village is located in the Hoy Ping District over 1 po from any of the district boundary lines.”
(Immig. Record, 55703/405—p. 85.)

“(Chairman to Interpreter.)

Q. In what dialect has this witness testified?

A. In the See Yip, Hoy Ping Dialect, with a word here and there given a pronunciation other than the See Yip, Hoy Ping dialect.

* * * * *

Interpreter Tang is replaced by Interpreter Lee Park Lin.

Witness recalled: Admonished he is still under oath.

Note: Interpreter instructed to hold conversation with witness.

(Chairman to Witness.)

Q. (Giving Exhibit ‘D.’) Here are 8 Chi-

nese sentences. Please read them slowly and pronounce carefully. A. Witness does so.

* * * * *

(Chairman to Interpreter.)

Q. In what dialect has this witness testified?

A. In the See Yip, Hoy Ping dialect.

* * * * *

Witness recalled: Admonished he is still under oath.

Interpreter: Leong Kow.

Note: Interpreter instructed to hold conversation with witness.

(Chairman to Witness.)

Q. (Showing Exhibit 'D.')

Here are 8 Chinese sentences. Please read them slowly and pronounce carefully.

A. Witness does so.

* * * * *

(Chairman to Interpreter Leong Kow.)

Q. In what dialect has this witness testified?

A. In my opinion, he speaks the See Yip, Hoy Ping dialect, but he tried to mix in some Cantonese dialect." (Id., pp. 86, 87, 88.)

The following appears in the testimony of JUNG WOH, given the same day:

“(Chairman to Interpreter.)

Q. In what dialect has this witness testified?

A. In the See Yip dialect of the Hoy Ping District.

* * * * *

Lee Park Lin replaces Interpreter Harry Tang.

Witness recalled: Admonished he is still under oath.

Note: Interpreter instructed to hold conversation with witness.

(Chairman to Witness.)

Q. (Showing Exhibit 'D.')

Here are 8 Chinese sentences. Please read them slowly and pronounce carefully. A. Witness does so.

* * * * *

(Chairman to Interpreter.)

Q. In what dialect has this witness testified?

A. See Yip, Hoy Ping." (Id., p. 89.)

Witness recalled: Admonished he is still under oath.

Interpreter: Leong Kow.

Note: Interpreter instructed to hold conversation with witness.

(Chairman to Witness.)

Q. (Showing Exhibit 'D.')

Here are 8 Chinese sentences. Please read them slowly and pronounce carefully. A. Witness does so.

* * * * *

(Chairman to Interpreter.)

Q. In what dialect has this witness testified?

A. In my opinion, he speaks the See Yip, Hoy Ping dialect." (Id., p. 90.)

The following appears in record of testimony given by JUNG SOM on February 1, 1928:

"Speaks the See Yip dialect of the Hoy Ping District." (Immig. Record 26504/4-19—p. 10.)

The following appears in record of testimony given by JUNG SHARE on June 23d, 1920:

“Speaks See Yip dialect.” (Immig. Record 19217/4-10—p. 12.)

Record of testimony given by JUNG OCK at various times shows the following:

May 8, 1914: “Speaks the See Yip dialect.” (Immig. Record 26188/23-27—p. 9.)

June 23, 1920: “Speaks See Yip dialect.” (Immig. Record 19217/4-10—p. 16.)

Testimony of applicant JUNG LIN given on December 19, 1929, contains the following:

“Applicant answers manifest questions as follows: I am 25 years old, Chinese reckoning; female of the Chinese race; I was born K. S. 31-6-4 (July 6, 1905) in the See Gow Village, Hoy Ping Dist., China, where I have lived all my life until coming to the U. S.”

* * * * *

Note by Interpreter Chas. Jung: This applicant claims to speak the See Yip Dialect of the Hoy [15] Ping District, but after hearing this applicant testify so far in the case, I believe that this applicant is testifying in a dialect other than the one she claims. I believe it is better to have a change of interpreters, so that there may be no misunderstanding.” (Immig. Record 55703/405—p. 17.)

Record of the testimony taken on December 21, 1929, shows the following:

“(By Chairman to the Interpreter, Lee Park Lin.)

Q. In what dialect has this applicant testified?

A. She testified part of the time in Cantonese and part of the time in some other dialect and it sounded to be more like a person who is trying to speak the See Yip Dialect, somewhat like the Sun Woey Dialect, but nothing like the Hoy Ping District Dialect, the district claimed by the applicant to have come from.” (Id., p. 27.)

Record of the applicant’s testimony of December 24, 1929, shows the following:

“Q. Have you ever spoken any other dialect than the one you are speaking now? A. No. (By Chairman to Applicant.)

Q. All the Interpreters who have served you in this case are now present in this room. Will you explain why it is that you speak a dialect utterly different from the See Yip, Hoy Ping Dialect which you should speak if you were born and raised in the district that you claim as home?

A. Well, I have always spoken the same dialect that I am speaking now.

Q. All of these Interpreters are agreed upon the fact that the dialect you are now speaking is not the See Yip, Hoy Ping Dialect. Have you any explanation to offer why you should not be speaking the See Yip, Hoy Ping Dialect?

A. Well, there are many dialects spoken in the Hoy Ping District and I have always spoken the same dialect that I am speaking now.

Q. (To Interpreter C. J. Jung.) Does this applicant, in your estimation, talk in the See Yip, Hoy Ping dialect? A. No.

Q. Did she ever use the See Yip, Hoy Ping dialect while you were acting on this case?

A. No.

Q. (To Interpreter Fung Ming.) Does this applicant, in your estimation, talk in the See Yip, Hoy Ping dialect? A. No.

Q. Did she ever use the See Yip, Hoy Ping dialect while you were acting on this case?

A. She uses a mixed dialect, a little of the Hoy Ping, a little bit of the Sun Ning, a little bit of the Sun Wui, and a little bit of Sam Yup.

Q. (To Interpreter Mrs. D. K. Chang.) Does this applicant, in your estimation talk in the See Yip, Hoy Ping dialect? A. No.

Q. Did she ever use the See Yip, Hoy Ping dialect while you were acting on this case?

A. No. She spoke mainly Sam Yup dialect." (Id., pp. 50, 51.) [16]

"(By Chairman to Interpreter H. K. Tang.)

Q. Have you questioned this applicant in the See Yip dialect of the Hoy Ping District, which she claims to speak? A. I have.

Q. Has the applicant answered you in that dialect? A. No.

Q. In what dialect has this applicant testified?

A. In the Sam Yup dialect. The dialect she speaks sounds like the dialect spoken by people of the Ching Yuen District, a district located about 40 or 50 miles north of Canton City. Her dialect is not the pure Canton City dialect.

Q. Has this applicant used the same dialect thruout her testimony while you acted as Interpreter? A. She has.

Q. Does the applicant's dialect in any way resemble the See Yip dialect?

A. No, there is a pronounced difference." (Id., p. 52.)

Record of applicant JUNG LIN'S testimony, given on February 3, 1930, shows the following:

“(Interpreter: Harry Tang.)

Q. What are all your names?

A. Jung Lin, no others.

Note: Interpreter instructed to hold conversation with applicant.

(Chairman to Interpreter.)

Q. Mr. Tang, how long have you been an interpreter in the Government Service?

A. About 16 years in all.

Q. Have you ever been called upon to pass expert opinion upon the questions of different Chinese dialects? A. Yes.

Q. Have you ever appeared in any court as an expert on dialect questions?

A. I do not recall that I have appeared in court in that capacity.

Q. Have you ever appeared in court as an expert interpreter?

A. Yes, I have, many times.

Q. What experience have you had interpreting south Chinese dialects?

A. I have been in the U. S. Immigration Service for about 16 years, interpreting mostly for Chinese coming here from south China, particularly from those districts about Canton City. The dialects spoken by these people are commonly classified here as Sam Yup, See Yip, Heung Shan, and Hock Gar dialects. I am quite familiar with these dialects from the fact that I have acted as Chinese Interpreter in the Immigration Service and from my coming in contact with them in the different parts of the United States, and also from my many years of residence in south China.

Q. In what dialect has this applicant testified? A. In the Sam Yup dialect.

Q. Did you try to speak to her in the See Yip, Hoy Ping dialect, which she claims to speak? A. I did.

Q. Did she answer you in that dialect?

A. No, she did not, although she appears to understand the Hoy Ping dialect quite readily.

Q. Does the applicant's dialect differ noticeably from the See Yip, Hoy Ping dialect?

A. Yes.

Interpreter Lee Park Lin replaces Harry Tang as interpreter.

Q. Have you understood the previous interpreter? A. Yes. [17]

Note: Interpreter instructed to hold conversation with applicant.

(Chairman to Interpreter.)

Q. Mr. Lee, how long have you been an interpreter in the Government Service?

A. Over twenty-one years.

Q. Have you ever been called upon to pass expert opinion upon the question of different Chinese dialects? A. Yes, occasionally.

Q. Have you ever appeared in any court as an expert interpreter? A. Yes.

Q. What experience have you had with south Chinese dialects?

A. I have interpreted nothing but the Southern Chinese dialects during all the time I have been serving as interpreter in the Immigration Service for over 21 yrs. During that time I have had much opportunity in interpreting for Chinese coming from the See Yip districts and Sam Yup districts and for that reason I am able to tell by listening to their speech, just what part of China they come from.

Q. In what dialect has this applicant spoken to you?

A. She has spoken in a mixed dialect; she is attempting to speak the Hoy Ping District dialect but, in my opinion, she came originally from a place where Cantonese dialect is spoken, because in her answers she spoke more

a Cantonese dialect than she did Hoy Ping District dialect.

Q. Is there a pronounced difference between the applicant's dialect and the See Yip, Hoy Ping dialect?

A. Yes, but as I have stated before, she attempted to speak the Hoy Ping District dialect.

Q. You have heard the applicant's two alleged brothers speak. In your opinion, does the applicant speak the same dialect that was used by her two alleged brothers? A. No.

Interpreter Leong Kow replaces Lee Park Lin as interpreter.

Q. Have you understood the previous interpreter? A. Yes.

Note: Interpreter instructed to hold conversation with applicant.

(Chairman to Interpreter.)

Q. Mr. Leong, how long have you been an interpreter in the Government service?

A. About 7 years.

Q. Have you ever appeared in any court as an interpreter? A. Once.

Q. What experience have you had with south Chinese dialects?

A. In my experience with the Immigration Service I have met many Chinese from a number of different districts in south China and am familiar with most of the dialects spoken in south China.

Q. In what dialect has this applicant spoken to you?

A. In a mixed dialect, composed of Sam Yup and See Yip dialects.

Q. Is there a pronounced difference between the applicant's dialect and the See Yip, Hoy Ping dialect? A. Yes.

Q. You have heard the applicant's two alleged brothers speak. In your opinion, does the applicant speak the same dialect that is used by her two alleged brothers? A. No.

(To applicant.)

Q. Have you understood the interpreter?

A. Yes (through Harry Tang). [18]

Note: Interpreter Harry Tang recalled.

(Chairman to Interpreter Mr. Tang.)

Q. You have heard the applicant's two alleged brothers speak. In your opinion, does the applicant speak the same dialect that is used by her two alleged brothers?

A. No." (Id., pp. 90, 91, 92.)

II.

JUNG LIN testified on December 19, 1929, as follows:

"I was born K. S. 31-6-4 (July 6, 1905)."

(Id., p. 17.)

JUNG OCK testified on January 4, 1906, upon his application for admission to the United States as follows:

"Q. When were you married?

A. Last year, 8th month.

* * * * *

Q. Where is your wife living now?

A. She is living in Say Geu village, my village.

Q. Who is living in the house where she is?

A. She is living there by herself.” (Immig.

Record 12017/27772—p. 39.)

III.

JUNG JUCK testified on December 18, 1929, as follows:

“Q. Describe your maternal grandparents.

A. Grandfather, Leung Yick Chew, 65 or 66 years old, now living in the Foo Shan village, Hoy Ping District, China; grandmother, Jung Shee, 65 or 66 years old; natural feet; now living in the Foo Shan Village, Hoy Ping District, China.” (Immig. Record 55703/405—p. 31.)

JUNG SHARE testified on the same date as follows:

“Q. Describe your maternal grandparents.

A. Grandfather, Leung Yick Chew, age, a little over 60; now residing at Foo Shan Village; my grandmother is, Jeung Shee, age, a little over 60; natural feet, now dead.

Q. When did your maternal grandmother die? A. Several years ago.

Q. How do you know that?

A. Her mother told me.

Q. If that grandmother was dead would not your brother, Jung Juck, know about it? He has said that she is living.

A. In that case I forgot about it.

Q. Well, is she living or dead?

A. She is not living.

Q. How old were you at the time of her death?

A. I do not remember how old I was. When I was young my mother told me." (Id., p. 39.)

JUNG LIN testified on December 19, 1929, as follows:

"Q. What are the names of your mother's parents?

A. Her father's name was Leung Yick Chew; her mother was Jung Shee. Both died before I was born." (Id., p. 19.) [19]

IV.

Summary of the Board of Special Inquiry shows the following:

"It should be noted that the attitude of the applicant thruout the hearing was not good. She maintained a sullen furtive air thruout the hearing and most of her answers were given in a hesitating manner, somewhat like that of a school child trying to answer a previously prepared lesson." (Id., p. 54.)

V.

The following appears in the record of the hearing on February 3, 1930.

"Applicant and her two alleged brothers

brought before the Board for physical comparison.

(By Member HECHT.)

In my opinion, there is no resemblance between the applicant and her two alleged brothers, but there is some resemblance between the two alleged brothers.

(By Member DAVIS.)

I have carefully observed the three persons before this Board and am unable to see a resemblance between the applicant and either of her alleged brothers.

(By Member COLE.)

A comparison of the applicant and her 2 alleged brothers shows a remarkable difference in stature. This feature is remarkable in view of the fact that the three people are quite close to each other in age. The complexion of the oldest alleged brother Jung Juck is quite fair, almost white, while that of the applicant and the other alleged brother are quite sallow and distinctly olive in hue. I could not note any elements of resemblance among these three people that would lead me to believe that a family relationship exists." (Id., p. 93.)

And the following in summary of the Board of Review, dated March 7, 1930.

“From a comparison of the photographs submitted, the Board of Review is of the opinion that while it might reasonably be claimed that the applicant slightly resembles one of her four alleged brothers, namely, Jung Juck, though not

in any degree convincingly to establish a claim of relationship, yet there is no slightest indication of resemblance between her appearance and that of her deceased alleged father or that of either of her other three alleged brothers.” (Id., p. 114.)

GEORGE J. HATFIELD,
United States Attorney,
(Attorney for Respondent.)

Service admitted this 14th day of April, 1930.

JOSEPH P. FALLON.

By E. RISSO.

[Endorsed]: Filed May 26, 1930. [20]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 26th day of May, in the year of our Lord one thousand nine hundred and thirty. Present: The Honorable FRANK H. KERRIGAN, Judge.

[Title of Cause.]

MINUTES OF COURT—MAY 26, 1930—ORDER
SUBMITTING MATTER.

This matter came on regularly this day for hearing on order to show cause as to the issuance of a writ of habeas corpus. J. P. Fallon, Esq., was present as attorney for petitioner. A. E. Bagshaw,

Esq., Asst. U. S. Atty., was present for respondent. On motion of Mr. Fallon and no objections being made thereto, the Court ordered that the Immigration Records be filed as part of original petition. Said matter was argued by counsel and ordered submitted. [21]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 27th day of May, in the year of our Lord one thousand nine hundred and thirty. Present: The Honorable FRANK H. KERRIGAN, Judge.

[Title of Cause.]

MINUTES OF COURT—MAY 27, 1930—ORDER
DENYING PETITION FOR WRIT OF
HABEAS CORPUS.

IT IS ORDERED that the petition for writ of habeas corpus heretofore submitted herein be and the same is hereby denied, and said petition dismissed accordingly. [22]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Clerk of the Above-entitled Court, to JOHN D. NAGLE, Commissioner of Immigration, and to GEORGE J. HATFIELD, Esq., United States Attorney, His Attorney:

You, and each of you, will please take notice that Jung Woh, the petitioner in the above-entitled matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the order and judgment rendered, made and entered herein on May 27, 1930, denying the petition for a writ of habeas corpus filed herein.

Dated this 2d day of June, 1930.

JOSEPH P. FALLON,
Attorney for Petitioner. [23]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now Jung Woh, the petitioner in the above-entitled matter, through his attorney, Joseph P. Fallon, Esq., and respectfully shows:

That on the 27th day of May, 1930, the above-entitled court made and entered its order denying the petition for a writ of habeas corpus, as prayed for, on file herein, in which said order in the above-entitled cause certain errors were made to the prejudice of the appellant herein, all of which will

more fully appear from the assignment of errors filed herewith.

WHEREFORE, the appellant prays that an appeal may be granted in her behalf to the Circuit Court of Appeals of the United States for the Ninth Circuit thereof, for the correction of the errors as complained of, and further, that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof, and further, that the said appellant be held within the jurisdiction of this court during the pendency of the appeal herein, so that she may be produced in execution of whatever judgment may be finally entered herein.

Dated at San Francisco, California, June 2d, 1930.

JOSEPH P. FALLON,
Attorney for Petitioner. [24]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes the appellant, Jung Lin, through her attorney, Joseph P. Fallon, Esq., and sets forth the errors she claims the above-entitled court committed in denying her petition for a writ of habeas corpus, as follows:

I.

That the court erred in not granting the writ of

habeas corpus and discharging the appellant, Jung Lin, from the custody and control of John D. Nagle, Commissioner of Immigration at the port of San Francisco.

II.

That the court erred in not holding that it had jurisdiction to issue the writ of habeas corpus as prayed for in the petition on file herein.

III.

That the court erred in not holding that the allegations set forth in the petition for a writ of habeas corpus were sufficient in law to justify the granting and issuing of a writ of habeas corpus.

IV.

That the court erred in holding that the claimed discrepancies in the testimony, as a result of the evidence adduced before the immigration authorities, were sufficient, in law, to justify the [25] conclusion of the immigration authorities that the claimed relationship between the alleged father of appellant and appellant did not exist.

V.

That the court erred in not holding that the claimed discrepancies in the testimony as a result of the evidence adduced before the immigration authorities, were not sufficient in law, to justify the conclusion of the immigration authorities that the claimed relationship between the alleged father of appellant and appellant did not exist.

VI.

That the court erred in holding that the claimed discrepancies, or any of them, in the testimony, as a result of the evidence adduced before the immigration authorities, were not subject to a reasonable explanation and reconcilable.

VII.

That the court erred in not holding that any and all of the claimed discrepancies in the testimony, as a result of the evidence adduced before the immigration authorities, were subject to a reasonable explanation and reconcilable.

VIII.

That the court erred in holding that the evidence adduced before the immigration authorities was not sufficient, in kind and character, to warrant a finding by the immigration authorities that the claimed relationship between the alleged father of appellant and appellant existed.

IX.

That the court erred in not holding that the evidence adduced before the immigration authorities was sufficient, in kind and character, to warrant a finding by the immigration authorities that the claimed relationship between the alleged father of appellant and appellant existed. [26]

X.

The court erred in holding that there was substantial evidence before the immigration authori-

ties to justify the conclusion that the claimed relationship between the alleged father of the appellant and the appellant did not exist.

XI.

That the court erred in not holding that there was no substantial evidence before the immigration authorities to justify the conclusion that the claimed relationship between the alleged father of the appellant and the appellant did not exist.

XII.

That the court erred in holding that the appellant was accorded a full and fair hearing before the immigration authorities.

XIII.

That the court erred in not holding that the appellant was not accorded a full and fair hearing before the immigration authorities.

WHEREFORE, appellant prays that the said order and judgment of the United States District Court for the Northern District of California made, given and entered herein in the office of the Clerk of said court on the 27th day of May, 1930, denying the petition for a writ of habeas corpus be reversed and that she be restored to her liberty and go hence without day.

JOSEPH P. FALLON,
Attorney for Appellant.

Service and receipt of a copy of the within notice of appeal, petition, and assignment of errors is hereby admitted this 3 day of June, 1930.

GEO. J. HATFIELD,
Attorney for _____.

[Endorsed]: Filed Jun. 3, 1930. [27]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

It appeared to the above-entitled court that Jung Woh, the petitioner herein, has this day filed and presented to the above court his petition praying for an order of this court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of this court denying a writ of habeas corpus herein and dismissing his petition for said writ, and good cause appearing therefor,—

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS HEREBY FURTHER ORDERED that the Clerk of the above-entitled court make and prepare a transcript of all the papers, proceedings and records in the above-entitled matter and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit within the time allowed by law; and

IT IS FURTHER ORDERED that the execution of the warrant of deportation of said Jung Lin be and the same is hereby stayed pending this appeal, and that the said Jung Lin be not removed from the jurisdiction of this court pending this appeal.

Dated at San Francisco, California, June 3d, 1930.

FRANK H. KERRIGAN,
United States District Judge.

Service and receipt of a copy of the within order allowing appeal is hereby admitted this 3 day of June, 1930.

GEO. J. HATFIELD,
Attorney for _____.

[Endorsed]: Filed Jun. 3, 1930. [28]

[Title of Court and Cause.]

ORDER TRANSMITTING ORIGINAL
EXHIBITS.

It appearing to the court that the original immigration records appertaining to the application of Jung Lin, the detained herein, to enter the United States, were introduced in evidence before and considered by the lower court in reaching its determination herein, and it appearing that said records are a necessary and proper exhibit for the determination of said case upon appeal to the Circuit Court of Appeals,—

IT IS NOW THEREFORE ORDERED, upon motion of Joseph P. Fallon, Esq., attorney for the detained herein, that the said immigration records may be withdrawn from the office of the Clerk of this court, and filed by the Clerk of this court in the office of the Clerk of the United States Circuit Court of Appeals in and for the Ninth Judicial District, said withdrawal to be made at the time the record on appeal is certified to by the Clerk of this court.

Dated at San Francisco, California, June 3d, 1930.

FRANK H. KERRIGAN,
United States District Judge.

Service and receipt of a copy of the within order transmitting original exhibits is hereby admitted this 3 day of June, 1930.

GEO. J. HATFIELD,
Attorney for _____.

[Endorsed]: Filed Jun. 3, 1930. [29]

[Title of Court.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 29 pages, numbered from 1 to 29 inclusive, contain a full, true, and correct transcript of the records and proceedings in the Matter of Jung Lin, on Habeas

Corpus, No. 20,233—K, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of fourteen dollars and thirty-five cents (\$14.35), and that the said amount has been paid to me by the attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 24th day of June, A. D. 1930.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [30]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States, to JOHN D. NAGLE, Commissioner of Immigration, Port of San Francisco, and GEORGE J. HATFIELD, United States Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Jung Lin

is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS, the Honorable FRANK H. KERRIGAN, United States District Judge for the Southern Division of the Northern District of California, this 3d day of June, A. D. 1930.

FRANK H. KERRIGAN,
United States District Judge.

Service and receipt of a copy of the within citation on appeal is hereby admitted this 3 day of June, 1930.

GEO. J. HATFIELD,
Attorney for _____.

[Endorsed]: Filed Jun. 3, 1930. [31]

[Endorsed]: No. 6174. United States Circuit Court of Appeals for the Ninth Circuit. Jung Lin, Appellant, vs. John D. Nagle, as Commissioner of Immigration for the Port of San Francisco, California, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed June 24, 1930.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

